



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

999 18TH STREET - SUITE 300

DENVER, CO 80202-2466

Phone 800-227-8917

<http://www.epa.gov/region08>

Ref: 8ENF-L

April 5, 2006

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
AND VIA FACSIMILE

Joni Upsher, Registered Agent
Upsher Limited Liability Company
P.O. Box 25052
Jackson, WY 83001

RE: Emergency Administrative
Order under section 1431 of the SDWA
Docket No. SDWA-08-2006-0023
Camp Creek Inn, PWS ID #560-0896

Dear Ms. Upsher:

On March 30, 2006, the United States Environmental Protection Agency (EPA) sent you an Emergency Administrative Order ("Order") issued under section 1431 of the Safe Drinking Water Act ("Act"), 40 U.S.C. § 300i.

On March 30, 2006, after EPA faxed the Order to you, Melanie Wasco and Judith Binegar-Wilson explained the each of the requirements of the Order. EPA inadvertently excluded pages 4 and 5 from the Order mailed to you. Therefore, attached to this letter, please find the cover letter and Order, which includes pages 4 and 5. Please note, this Order is the same as the one EPA issued on March 30, 2006, with the addition of pages 4 and 5.

If you have any questions, please feel free to call Judith Binegar-Wilson, Environmental Protection Specialist, at (800) 227-8917, extension 6606, or (303) 312-6606. If you are represented by an attorney feel free to ask your attorney to call me at the above 800 number, extension 6921, or at (303) 312-6921.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink that reads "Michelle Marcu".

Michelle Marcu
Enforcement Attorney

Enclosure

cc: WY DEQ (via email)
WY DOH (via email)



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March 30, 2006

CERTIFIED MAIL
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Joni Upsher, Registered Agent
Upsher Limited Liability Company
P.O. Box 25052
Jackson, WY 83001

RE: Emergency Administrative
Order under section 1431 of the SDWA
Docket No. SDWA-08-2006-0023
Camp Creek Inn, PWS ID #560-0896

Dear Ms. Upsher:

Enclosed is an Emergency Administrative Order ("Order") issued under section 1431 of the Safe Drinking Water Act ("Act"), 40 U.S.C. § 300i. In its current state, the water supplied by the Camp Creek Inn ("Camp Creek") public water system ("System") may present an imminent and substantial endangerment to the human health. The Order is based the following factors: (1) Five (5) *E. coli*-positive samples collected and analyzed on March 28, 2006, and four (4) *E. coli*-positive samples collected on March 29, 2006 (and analyzed on March 30, 2006), which exceeded the acute maximum contaminant level ("MCL") for total coliform bacteria, in violation of 40 C.F.R. § 141.63; (2) EPA's prior determination that structural and operational problems with the wells may indicate that the wells are under the direct influence of surface water; (3) prior *E. Coli*-positive and total coliform-positive sample results from the System collected in August, 2004; and (4) general unsanitary conditions at the wellhead.

The enclosed Order sets forth the actions that Upsher Limited Liability Company and you (collectively "Upsher") must immediately take to ensure that the people served by the water supply are provided with safe drinking water. Penalties for failing to comply are set forth in the Order. The Order requires that the Upsher conduct the following activities: (1) Within 24 hours, provide an intent to comply with the Order; (2) provide an alternative potable water supply; (3) submit a detailed plan to EPA for bringing Respondent's public water system into compliance with the MCL; (4) conduct increased monitoring for total coliform bacteria; (5) conduct Microscopic Particulate Analysis; and (6) provide public notice within 24 hours.

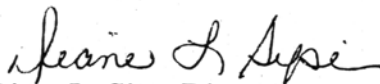


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EPA is committed to working with you to ensure the safety of the System's water supply. If you have any questions regarding this Order, the most knowledgeable individual on my staff regarding these requirements is Judith Binegar-Wilson, Environmental Protection Specialist, at (800) 227-8917, extension 6606, or (303) 312-6606. If you are represented by an attorney feel free to ask your attorney to call Michelle Marcu, Enforcement Attorney, at the above 800 number, extension 6921, or at (303) 312-6921.

We urge your prompt attention to this matter.

Sincerely,



Diane L. Sipe, Director
Technical Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

Enclosure

cc: WY DEQ (via email)
WY DOH (via email)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2006 MAR 30 PM 2:35

IN THE MATTER OF)

Upsher Limited Liability Company and)
Joni Upsher)
Camp Creek Inn PWS)

PWS ID #: 560-0896)

Respondents)

Proceedings under Section 1431(a))
of the Safe Drinking Water Act,)
42 U.S.C. § 300i(a))

FILED
EPA REGION VIII
HEARING CLERK

EMERGENCY
ADMINISTRATIVE ORDER

Docket No. SDWA-08-2006-0023

I. STATUTORY AUTHORITY

The following Findings are made and Order issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by Section 1431 of the Safe Drinking Water Act (the "Act"), 42 U.S.C. § 300i, as properly delegated to the Supervisors of the Technical and Legal Enforcement Programs of the Office of Enforcement, Compliance and Environmental Justice, EPA Region 8.

II. JURISDICTION

1. EPA has jurisdiction to issue emergency orders pursuant to the emergency powers provision of the Act, Section 1431 of the Act, 42 U.S.C. § 300i.
2. EPA has primary enforcement responsibility for the Act because the State of Wyoming does not have primary enforcement authority for public water systems.

III. FINDINGS

1. Upsher Limited Liability Company ("Respondent") is a limited liability company under the laws of the State of Wyoming as of May 17, 2004 and is therefore, a "person," within the meaning of section 1401(12) of the Act, 42 U.S.C. § 300f(12) and 40 C.F.R. § 141.2.
2. Joni Upsher ("Respondent") is an individual and is therefore, a "person," within the meaning of section 1401(12) of the Act, 42 U.S.C. § 300f(12) and 40 C.F.R. § 141.2.
3. Respondents own and/or operate the Camp Creek Inn Water System located in Jackson, Wyoming for the provision to the public of piped water for human consumption through pipes or other constructed conveyances.
4. Respondents' water System regularly serves an average of at least 25 individuals daily at least 60 days out of the year and is, therefore, a "public water system" within the meaning of Section 1401(4) of the Act, 42 U.S.C. § 300f(4), and a "non-community water system" within the meaning of 40 C.F.R. § 141.2.
5. Respondents own and/or operate a public water system and are each, therefore, a "supplier of water" within the meaning of Section 1401(5) of the Act, 42 U.S.C. § 300f(5) and 40 C.F.R. § 141.2. Respondents are therefore subject to the requirements of Part B of the Act, 42 U.S.C. § 300g, and its implementing regulations, 40 C.F.R. Part 141.

6. According to a November 10, 2004 sanitary survey by an agent of EPA, Respondents' System is supplied by a groundwater source consisting of three wells with 11 service connections serving approximately 50 persons per day year-round. Based on information EPA obtained from the Teton County Environmental Health Office on March 30, 2006, Respondents are currently using Well #2 as a potable water source and are not currently utilizing Wells #1 and #3 as sources for potable water.
7. EPA determined that a contaminant present in the System may present an imminent and substantial endangerment to the health of persons based on the following factors: (1) Five (5) *E. coli*-positive samples collected and analyzed on March 28, 2006, and four (4) *E. coli*-positive samples collected on March 29, 2006 (and analyzed on March 30, 2006), which exceeded the acute maximum contaminant level ("MCL") for total coliform bacteria, in violation of 40 C.F.R. § 141.63; (2) EPA's prior determination that structural and operational problems with the wells may indicate that the wells are under the direct influence of surface water; (3) prior *E. Coli*-positive and total coliform-positive sample results from the System collected in August, 2004; and (4) general unsanitary conditions at the wellhead.
8. Fecal coliform and *E. coli* are bacteria whose presence indicate that the water may be contaminated with human or animal waste. Microbes in this waste can cause diarrhea, cramps, nausea, headaches, or other symptoms. These bacteria can pose

a special health risk to infants, young children, and people with severely compromised immune systems.

9. Notwithstanding the initial efforts by the State of Wyoming, the State of Wyoming cannot act to protect public health under the Act because it is not authorized to do so.
10. Notwithstanding the initial efforts by the Teton County Environmental Health Office by issuing a boil water notice on March 29, 2006, the local authorities cannot act to protect public health under the Act because they is not authorized to do so.
11. On or about March 29 and 30, 2006, EPA consulted with State and local authorities regarding the information upon which this Order is based.
12. This Order and the requirements set forth herein are necessary to ensure adequate protection of public health.

IV. EMERGENCY ADMINISTRATIVE ORDER

Based on the foregoing Findings, and pursuant to section 1431 of the Act, IT IS
ORDERED:

A. INTENT TO COMPLY

1. Within 24 hours of receipt of this Order, Respondents shall notify EPA in writing of their intention to comply with the terms of this Order.
2. The Respondents' notification shall include a general plan for compliance with each of the elements of this Order.

B. ALTERNATIVE WATER SUPPLY

1. Upon the effective date of this Order, Respondents shall notify all water users of the System that an alternative potable water supply or water that has been boiled for at least three minutes is available. The alternative water supply shall be from a water distributor licensed by the State of Wyoming Department of Agriculture, Consumer Health Services Program, and shall be made available to the consumers of the System at no cost as needed for drinking and food preparation until Respondents receive notification from EPA that alternative water is no longer necessary. Respondents shall provide the alternative potable water supply at a central location that is accessible to all persons served by the System.
2. Respondents shall provide a sufficient quantity of water for reasonable domestic uses, at a minimum, two liters daily, for each customer of the public water system.
3. Within 24 hours of receipt of this Order, Respondents shall submit certification to EPA of compliance with the paragraphs above.

C. COMPLIANCE MEASURES

1. Within 30 days of this Order, Respondents shall submit a detailed plan to EPA for bringing Respondents' public water system into compliance with the total coliform MCL as set forth in 40 C.F.R. § 141.63. Respondents' plan, shall include and address, at a minimum, the following items:

- a. Respondents shall investigate and identify the cause of the *E. coli*-positive contamination in the System;
 - b. Describe efforts the Respondents will take to prevent recurrence of total and *E. coli*-positive contamination in the system and how Respondents will respond to this type of contamination in the future;
 - c. Proposed system modifications, including, but not limited to, addressing the Deficiencies/Recommendations identified in EPA's Sanitary Survey and alleviating and addressing the cause of the *E. coli*-positive contamination in the System;
 - d. Estimated costs of modifications; and
 - e. If construction is necessary, a schedule for construction of the project. If necessary, Respondents shall obtain and comply with any required permits from the Wyoming Department of Environmental Quality, Water Quality Division ("WDEQ").
 - f. The plan shall include specific milestone dates and a final compliance date.
2. The plan set forth above, including the schedule for construction and completion of modifications, will be incorporated into this Order upon written approval by EPA.

3. Within 30 days after EPA approves Respondents' plan, Respondents shall submit to EPA monthly reports on the progress toward completion of the selected remedy. Progress reports shall be submitted to the EPA contact indicated below each month and be postmarked no later than the 15th of each month.
4. Respondents shall complete improvements to its System as set forth above no later than three months after EPA approves the plan referenced above and shall notify EPA when modifications have been completed. If necessary, Respondents may submit a written request for additional time to implement significant improvements to the System. If EPA approves such request in writing, the revised time frame for compliance will be incorporated into this Order.

D. MONITORING REQUIREMENTS

1. Upon the effective date of this Order, Respondents shall take two daily total coliform samples to determine compliance with the MCL for total coliform bacteria as stated in 40 C.F.R. § 141.63, until EPA notifies Respondents to discontinue daily sampling. Respondents shall take one daily sample at the source and one daily sample in the distribution system. Respondents shall report daily total coliform sampling results, via telephone or telefax, to EPA immediately upon receiving the results.

2. After Respondents receive notification from EPA to discontinue daily total coliform sampling, Respondents shall collect two weekly bacteriological samples to determine compliance with the MCLs for total coliform bacteria as stated in 40 C.F.R. § 141.63. Respondents shall take one weekly sample at the source and one weekly sample in the distribution system. Respondents shall report weekly total coliform sampling results to EPA, via telephone or telefax, immediately upon receiving the laboratory results.
3. EPA will notify Respondents when weekly bacteriological sampling is no longer required.
4. Thereafter, Respondents shall comply with all bacteriological monitoring requirements for non-community water systems found at 40 C.F.R. § 141.21 to determine compliance with the MCLs as stated in 40 C.F.R. § 141.63.
5. By providing written notification, EPA may require Respondents to conduct increased total coliform sampling while the Order is in effect.
6. Respondents may be unable to comply with the total coliform MCL prior to identifying the cause of the *E. coli*-positive contamination and implementing the plan set forth in section C. above, nevertheless, Respondents are still required to comply with MCL for total coliform as stated in 40 C.F.R. § 141.63.

7. If any routine or repeat sample is total coliform-positive, Respondents shall analyze that sample to determine if fecal coliforms or *E. coli* are present. If fecal coliforms or *E. coli* are present, Respondents shall notify EPA by the end of the day, unless the system is notified of the result after EPA's office is closed, in which case the Respondents must notify EPA before the close of the next business day. [40 C.F.R. § 141.21(e)]
8. If Respondents are chlorinating the System, Respondents shall maintain a detectable chlorine residual in the distribution system no greater than 4.0 mg/L throughout the distribution system and shall monitor and record the chlorine residual in the distribution system daily. Respondents shall notify EPA within two hours if the chlorine residual is non-detectable at any point in the System. Respondents shall send the chlorine residual results to EPA monthly postmarked no later than the 15th of each month.
9. If Respondents chlorinate the system, Respondents shall monitor and record chlorine residual daily at the same time and locations as bacteriological monitoring is conducted and submit its results monthly to EPA postmarked no later than the 15th of each month.
10. Respondents shall report all bacteriological analytical results to EPA within 10 days of the end of each monitoring period, as required by 40 C.F.R. § 141.31(a), or sooner if specified in 7. above.

E. MICROSCOPIC PARTICULATE ANALYSIS ("MPA")

1. If a groundwater source is determined to be under the direct influence of surface water, the system must either provide filtration or meet the filtration avoidance criteria (40 C.F.R. § 141.70). Based upon the sanitary survey, EPA has determined that there is a possibility that Respondents' wells are under direct influence of surface water. For a final determination, MPAs are necessary from Well #2. For MPA analysis, two to three samples from the raw (untreated) well source must be collected as soon as conditions are favorable for MPAs to be taken, which is when the wells are most susceptible to surface water influence, but in no event shall the MPAs be taken later than June 15, 2006. Copies of the test results must be submitted to EPA for review within 15 days of receipt from the laboratory. If results from the first two MPAs per well are inconclusive, EPA may require a third MPA.

F. REOPENING WELLS: If Respondents elect to reopen Wells #1 or #3,

Respondents shall conduct the following actions prior to reopening the wells:

1. Submit a written request to EPA to reopen the well and EPA will inform Respondents of the number of samples that must be taken at that time; and
2. Collect total coliform samples as required by EPA, the State of Wyoming or local authorities. Respondents shall report analytical

results to EPA within the first 10 days of receiving the results, as required by 40 C.F.R. § 141.31(a); and

3. Submit a plan to EPA to consistently achieve compliance with the total coliform MCL as set forth in 40 C.F.R. § 141.63. The plan shall include specific milestone dates and a final compliance date. Any modification to the system and/or new construction may require a permit from the Wyoming Department of Environmental Quality, Water Quality Division ("WDEQ"); and
4. The plan set forth above, will be incorporated into this Order upon written approval by EPA; and
5. MPAs: Based upon the sanitary survey, EPA has determined that there is a possibility that Respondents' Wells #1 and 3 may be under direct influence of surface water. Prior to opening Wells #1 or #3, Respondents shall conduct MPAs from the wells. For MPA analysis, two to three samples from the raw (untreated) well source must be collected as soon as conditions are favorable for MPAs to be taken, which is when the wells are most susceptible to surface water influence. Copies of the test results shall be submitted to EPA for review within 15 days of receipt from your laboratory. If results from first the two MPAs per well are inconclusive, EPA may require a third MPA.

G. PUBLIC NOTICE

1. No later than 24 hours after receipt of this Order, Respondents shall provide public notice of the situation specified in this Order in the affected area. This public notice shall be given in one or more of the following forms of delivery: (1) Appropriate broadcast media (such as radio and television); (2) Posting of the notice in conspicuous locations throughout the area served by the System; (3) Hand delivery of the notice to persons served by the System; or (4) Another delivery method approved in writing by EPA. The notice shall be repeated at least once every 3 months by mail, hand delivery or posting as long as the situation exists. Respondents shall comply with any additional public notification requirements that may be established by EPA. Upon the effective date of this Order, Respondents shall comply with the public notification requirements at 40 C.F.R. § 141.201 et seq. following any future National Primary Drinking Water Regulation ("NPDWR") violation. Respondents shall submit a copy of the public notice to EPA within 24 hours of completion of the public notice. The public notice shall include the following information:
 - a. All requirements as specified in 40 C.F.R. § 141.205 including:
 - i. A description of the situation, including contaminant of concern and the contaminant level;

- ii. When the situation occurred;
 - iii. Any potential adverse health effects from the situation;
 - iv. The population at risk, including subpopulations particularly vulnerable if exposed to the contaminant in their drinking water;
 - v. Whether alternative water supplies should be used;
 - vi. What actions consumers should take, including when they should seek medical help, if known;
 - v. What the System is doing to correct the situation;
 - vi. When the System expects to return to compliance or resolve the situation;
 - vii. The name, business address, and phone number of the System owner, operator, or designee of the public water system as a source of additional information concerning the notice; and
 - viii. A statement to encourage the notice recipients to distribute the public notice to other persons served.
- b. Respondents shall include the following mandatory health effects language in the public notice as specified in
- 40 C.F.R. § 141.205(d)(1), appendix B to subpart Q of part 141:
- Coliforms are bacteria that are naturally present in the environment and are used as an indicator that other, potentially-harmful, bacteria

may be present. Coliforms were found in more samples than allowed and this was a warning of potential problems.

Fecal coliforms and *E. Coli* are bacteria whose presence indicates that the water may be contaminated with human or animal wastes. Microbes in these wastes can cause short-term effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a special health risk for infants, young children, and people with severely compromised immune systems.

UNTIL FURTHER NOTIFIED, ALL WATER USED FOR DRINKING, BRUSHING TEETH, COOKING, MAKING ICE, WASHING DISHES, OR USED FOR HUMAN CONSUMPTION, ETC., SHALL BE BOILED FOR AT LEAST THREE MINUTES, AT A ROLLING BOIL, BEFORE USE. ALL STORED WATER, DRINK OR ICE MADE RECENTLY FROM THIS SUPPLY SHALL BE DISCARDED.

F. REPORTING REQUIREMENTS

1. Unless otherwise specified, all reports and notifications herein required shall be submitted to:

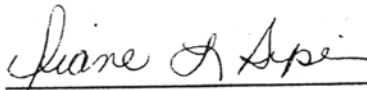
8P-W-DW
US Environmental Protection Agency
999 18th Street Suite 300
Denver, Colorado 80202-2466
Telephone Number: (303) 312-6274 (John Gillis)
Facsimile Number: (303) 312-6131

V. GENERAL PROVISIONS

- A. This Order does not constitute a waiver, suspension, or modification of the requirements of 40 C.F.R. § 141.1 et seq., or the Safe Drinking Water Act, which remain in full force and effect. Issuance of this Order is not an election by EPA to forgo any civil or criminal action otherwise authorized under the Act.

- B. Violation of any term of this Order instituted under section 1431(a) of the Act, 42 U.S.C. § 300i(a), may subject the Respondents to a civil penalty of not to exceed \$16,500 for each day in which such violation occurs or failure to comply continues, assessed by an appropriate U.S. District Court under section 1431(b) of the Act, 42 U.S.C. § 300i(b).
- C. Violation of any requirement of the SDWA or its implementing regulations instituted under section 1414(b), 42 U.S.C. § 300g-3(b), may subject Respondents to a civil penalty of not more than \$32,500 per day of violation assessed by an appropriate U.S. District Court under section 1414(b) of the Act, 42 U.S.C. § 300g-3(b).
- D. The effective date of this Order shall be the date of issuance.

Issued this 30th day of MARCH, 2006.



Diane L. Sipe, Director
Technical Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice



Michael T. Risner, Director
David J. Janik, Supervisory Attorney
Legal Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

bcc: Tina Artemis, 8RC - 2 copies
Brenda Cazier, 8ENF-PT
Michelle Marcu, 8ENF-L
Jack Rychecky, 8P-W-MS
Lisa Kahn, 8ENF-W
Judith Binegar-Wilson, 8ENF-W
Melanie Wasco, 8ENF-W
Charla Colson, 8P-W-MS
John Gillis (via email)
Reading File

→ cert & for
to joni
